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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,294	03/20/2002	Raymond Mikielski	217857USOPCT	8812
4249	7590	03/09/2004	EXAMINER	
CAROL WILSON BP AMERICA INC. MAIL CODE 5 EAST 4101 WINFIELD ROAD WARRENVILLE, IL 60555			NUTTER, NATHAN M	
			ART UNIT	PAPER NUMBER
			1711	
DATE MAILED: 03/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Pin

Office Action Summary	Application No. 10/019,294	Applicant(s) MIKIELSKI, RAYMOND ET AL	
	Examiner Nathan M. Nutter	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 11-30 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 11-30 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Claim Interpretations***

Claim 11 recites "a flexible composition based on one or more propylene polymers" and further includes "a plastomer prepared... (using)... a metallocene catalyst,... consist(ing) of a random copolymer of ethylene and at least one C₃-C₁₀ alpha-olefin". Essentially, while there must be one polypropylene resin and a polyethylene resin, there may be several propylene resins with a polyethylene resin.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 26 recites a "composition based on one or more propylene polymers according to Claim 18, comprising a plurality of random copolymers of propylene A), a plurality of plastomers B) or a mixture thereof." It is not clear from reading this claim whether the invention may embrace one or more propylene polymers with an ethylene polymer, as pointed out in the claim interpretation above. The choices appear to be:

- 1) a plurality of random copolymers of propylene,
- 2) a plurality of plastomers, or
- 3) a mixture of both 1) and 2), above.

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This is not in agreement with the rest of the claims on this point. As such, the claim appears to be vague and confusing.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-20 and 23-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tanaka et al, newly cited.

The reference to Tanaka et al teaches the manufacture of a polymer blend essentially identical to that recited and claimed herein in that a random copolymer of propylene, having the characteristics of melting point and melt flow index as recited, may be admixed with a random copolymer of ethylene and at least one C₃-C₁₀ alpha-olefin, having the characteristics of density, melt flow index and molecular mass distribution as recited, in amounts as specified in the instant claims. The reference further teaches the employment of a propylene/ethylene/1-butene random copolymer. Note the Abstract, column 2 (lines 41-64), column 3 (lines 10-67), and the Production Examples at columns 21-22. All physical characteristics for the polymers mixed are shown by the reference as overlapping directly with those recited and claimed herein. The flexural modulus values expressed in claims 20 and 25 would be inherent in the

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compositions produced in accordance with the teachings of the reference since all other parameters of compositional limitations and physical characteristics are embraced by the patent compositions.

Claims 18, 19, 21, 24, 25, 29 and 30 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ueda et al (EP 0 704 462 A1), cited by applicants.

The reference to Ueda et al teaches the production of the contemplated polymer blend at the Abstract, page 2 (line 37) to page 3 (line 3). Note page 13 (line 58) to page 15 (line 47) for the polymers employed and their physical characteristics that overlap directly with those recited and claimed herein.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al, cited and for the reasons set out above.

Further, the reference teaches at column 3 (lines 45-54) the selection of C₃-C₈ alpha-olefin, which range is embraced *in toto* by the recitation in claim 18 of "C₃-C₁₀ alpha-olefin", and choice of any of those monomers, as recited in claims 21, 22 or 30, would clearly have been an obvious modification to the composition, as directed by the

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teachings of the patent. As such, the instant claims would be clearly within the skill of an ordinary artisan from the teachings of the patent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on Monday-Friday 9:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).



Nathan M. Nutter
Primary Examiner
Art Unit 1711

nmn

29 February 2004